

AMENDED IN SENATE JUNE 13, 2002
AMENDED IN ASSEMBLY APRIL 29, 2002
AMENDED IN ASSEMBLY APRIL 17, 2002
AMENDED IN ASSEMBLY APRIL 10, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2930

**Introduced by Assembly Member Wright
(Coauthors: Assembly Members Aroner, Bill Campbell,
Longville, Robert Pacheco, Steinberg, and Wiggins)**

February 25, 2002

An act to amend Sections 125085, 125090, and 125107 of, *and to add Section 125092 to*, the Health and Safety Code, relating to HIV testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2930, as amended, Wright. Human immunodeficiency virus (HIV): maternal and newborn health.

Existing law requires a physician and surgeon to obtain a blood specimen from a pregnant woman before or at the time of delivery. Existing law requires the blood specimen to be tested for rhesus (Rh) blood type and the presence of the hepatitis B surface antigen.

This bill would require that the blood specimen also be tested for the presence of the human immunodeficiency virus (HIV). Under the bill, HIV testing would not be required if the pregnant woman has been determined to be chronically infected with HIV, as specified. The bill would require certain medical care providers to ensure that the woman

is informed of, among other things, the purpose of testing and that the woman has a right to refuse testing.

This bill would also require the department, in consultation with the State Office of AIDS and other specified organizations, to develop culturally sensitive informational material concerning HIV testing to assist the medical care provider in fulfilling his or her obligations under these provisions. The bill would require that the materials provide information on available referral and consultation resources of experts in prenatal HIV treatment. The bill would require the materials to be completed by December 31, 2003.

This bill would require that once the results of any tests conducted are received, the physician and surgeon or applicable care provider shall ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications to the mother's and infant's health, including any followup care that is indicated.

~~Existing law requires prenatal care providers, as defined, to offer an HIV test, information, counseling, and referral services that include providing certain information to every pregnant woman patient during prenatal care.~~

~~This bill would instead require prenatal care providers to explain the HIV test to every pregnant woman, except as specified, and to arrange for HIV testing unless the pregnant woman refuses the test.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The human immunodeficiency virus (HIV) infection rate
4 among ~~women of childbearing years~~ *childbearing women* is
5 estimated at 0.6 per 1,000. ~~Universal~~ *in California. This rate is*
6 *lower than in many other areas of the country. However, universal*
7 *testing of pregnant women could prevent the help further decrease*
8 *the risk of perinatal transmission of HIV to the newborn since*
9 *treatment before or and at the time of labor and delivery can*
10 ~~prevent help decrease the risk of transmission to the newborn.~~

11 (b) A study conducted by the National Institutes of Health
12 (NIH) has shown that treatment of pregnant women with

1 zidovudine (AZT or ZDV) can reduce transmission of HIV from
2 25 percent to less than 8 percent.

3 ~~(e) Another NIH study, concluded in 1999, has shown a further~~
4 ~~reduction of transmission of HIV to approximately 2 percent with~~
5 ~~a single dose of nevirapine administered at the time of labor and~~
6 ~~delivery and to the newborn after delivery.~~

7 *(c) Ongoing research sponsored by the NIH in the United States*
8 *demonstrates a reduction of perinatal transmission of HIV with the*
9 *use of Highly Active Antiretroviral Therapy (HAART) during*
10 *pregnancy, ZDV during delivery, and neonatal ZDV.*

11 (d) The cost of an HIV test in the standard prenatal panel is
12 estimated to cost three dollars (\$3) to ~~five dollars (\$5) thirteen~~
13 ~~dollars (\$13). The average total lifetime charges for the care of a~~
14 ~~child with HIV infection is estimated at four hundred ninety one~~
15 ~~thousand nine hundred thirty six dollars (\$491,936), making~~
16 *While the costs of medications to both pregnant women and their*
17 *infants, before and after birth, are expensive, early detection*
18 *through universal HIV screening of pregnant women has been*
19 *proven to be a cost-effective policy.*

20 SEC. 2. Section 125085 of the Health and Safety Code is
21 amended to read:

22 125085. (a) As early as possible during prenatal care, a blood
23 specimen obtained pursuant to Section 125080 shall be submitted
24 to a clinical laboratory licensed by the department or to an
25 approved public health laboratory for a determination of rhesus
26 (Rh) blood type and the results shall be reported to both of the
27 following:

28 (1) The physician and surgeon or other person engaged in the
29 prenatal care of the woman or attending the woman at the time of
30 delivery.

31 (2) The woman tested.

32 (b) (1) In addition, as early as possible during prenatal care, a
33 blood specimen obtained pursuant to Section 125080 shall be
34 submitted to a clinical laboratory licensed by the department or to
35 an approved public health laboratory for a test to determine the
36 presence of hepatitis B surface antigen and the human
37 immunodeficiency virus (HIV), and the results shall be reported
38 to both of the following:

1 (A) The physician and surgeon or other person engaged in the
2 prenatal care of the woman or attending the woman at the time of
3 delivery.

4 (B) The woman tested.

5 (2) In the event that other tests to determine hepatitis B
6 infection or HIV infection become available, the department may
7 approve additional tests.

8 SEC. 3. Section 125090 of the Health and Safety Code is
9 amended to read:

10 125090. (a) Subdivision (a) of Section 125085 shall not be
11 applicable if the licensed physician and surgeon or other person
12 engaged in the prenatal care of a pregnant woman or attending the
13 woman at the time of delivery has knowledge of the woman's
14 blood type and accepts responsibility for the accuracy of the
15 information.

16 (b) Subdivision (b) of Section 125085 shall not be applicable
17 if the licensed physician and surgeon or other person engaged in
18 the prenatal care of a pregnant woman or attending the woman at
19 the time of delivery has knowledge that the woman has previously
20 been determined to be chronically infected with hepatitis B or
21 human immunodeficiency virus (HIV) and accepts responsibility
22 for the accuracy of the information.

23 (c) Prior to obtaining a blood specimen collected pursuant to
24 subdivision (b) of Section 125085 or this section, the physician
25 and surgeon or other person engaged in the prenatal care of a
26 pregnant woman or attending the woman at the time of delivery
27 shall ensure that the woman is informed of the intent to perform
28 a test for HIV infection, the routine nature of the test, the purpose
29 of the testing, *the risks and benefits of the test*, the risk of perinatal
30 transmission of HIV, that ~~a currently approved treatment is known~~
31 ~~to prevent perinatal~~ *approved treatments are known to decrease*
32 *the risk of perinatal* transmission of HIV, and that the woman has
33 a right to refuse this testing. ~~Any refusal of testing for HIV shall~~
34 ~~be in writing and shall accept or refuse this testing. Acceptance or~~
35 ~~refusal shall be deemed specific to the time of offer and shall not~~
36 ~~preclude another HIV test offer. The acceptance or refusal of~~
37 ~~testing for HIV shall be documented in writing on a form developed~~
38 ~~by the department and the State Office of AIDS pursuant to Section~~
39 ~~125092, and signed by the patient. A copy of this form shall be~~
40 maintained in the medical record.

(d) If, during the final prenatal care standard medical tests, the medical records of the pregnant woman do not document a test for rhesus (Rh) blood type, a test for hepatitis B, or a test for HIV, the physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of labor or delivery shall obtain a blood specimen from the woman for the test that has not been ~~documented, and documented.~~ *Prior to obtaining this blood specimen, the provider shall ensure that the woman is informed of the intent to perform the tests that have not been documented prior to this visit, including a test for HIV infection, the routine nature of the test, the purpose of the testing, the risks and benefits of the test, the risk of perinatal transmission of HIV, that a currently approved treatment is known to prevent approved treatments are known to decrease the risk of perinatal transmission of HIV, and that the woman has a right to refuse this testing. Any refusal for HIV testing shall be in writing and shall be maintained in the medical record. The woman has a right to accept or refuse the HIV test. Acceptance or refusal shall be deemed specific to the time of offer and shall not preclude another HIV test offer. The acceptance or refusal of testing for HIV shall be documented in writing on a form developed by the department and the State Office of AIDS, as described in Section 125092, and signed by the patient. A copy of this form shall be maintained in the medical record.* The blood shall be tested by a method that will ensure the earliest possible results, and the results shall be reported to both of the following:

(1) The physician and surgeon or other person engaged in the prenatal care of the woman or attending the woman at the time of delivery.

(2) The woman tested.

(e) After the results of the tests done pursuant to this section and Section 125085 have been received, the physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending the woman at the time of labor, delivery, or postpartum care at the time the results are received shall ensure that the woman receives information and counseling, as appropriate, to explain the results and the implications for the mother's and infant's health, including any followup care that is indicated. *If the woman tests positive for HIV antibodies, she shall also receive, whenever possible, a referral to a provider, provider group, or institution specializing in prenatal care for HIV positive women.*

1 *Health care providers are also strongly encouraged to seek*
2 *consultation with other providers specializing in the care of*
3 *pregnant HIV positive women.*

4 (f) The provisions of Section 125107 for counseling are
5 equally applicable to every pregnant patient covered by
6 subdivisions (c) and (d).

7 SEC. 4. *Section 125092 is added to the Health and Safety*
8 *Code, to read:*

9 *125092. The department, in consultation with the State Office*
10 *of AIDS and with other stakeholders, including, but not limited to,*
11 *representatives of professional medical and public health*
12 *advocacy groups, providers of health care to women and infants*
13 *infected with or exposed to HIV, and women living with HIV, shall*
14 *develop culturally sensitive informational material adequate to*
15 *fulfill the requirements of subdivisions (c) and (d) of Section*
16 *125090, in English, Spanish, and other languages used by the*
17 *department when providing information to clients under the*
18 *Medi-Cal program. This material shall also include information*
19 *on available referral and consultation resources of experts in*
20 *prenatal HIV treatment. This material shall be completed by*
21 *December 31, 2003.*

22 SEC. 5. Section 125107 of the Health and Safety Code is
23 amended to read:

24 125107. (a) For purposes of this section, “prenatal care
25 provider” means a licensed health care professional providing
26 prenatal care within his or her lawful scope of practice. This
27 definition shall not include a licensed health care professional who
28 provides care other than prenatal care to a pregnant patient.

29 (b) The prenatal care provider primarily responsible for
30 providing prenatal care to a pregnant patient shall offer human
31 immunodeficiency virus (HIV) information and counseling to
32 every pregnant patient. This information and counseling shall
33 include, but shall not be limited to, all of the following:

34 (1) A description of the modes of HIV transmission.

35 (2) A discussion of risk reduction behavior modifications,
36 including methods to reduce the risk of perinatal transmission.

37 (3) Referral information to other HIV prevention and
38 psychosocial services, if appropriate, including anonymous and
39 confidential test sites approved by the Office of AIDS of the State
40 Department of Health Services.

1 ~~(c) The prenatal care provider primarily responsible for~~
2 ~~providing prenatal care to a pregnant patient shall explain the HIV~~
3 ~~test as defined in Section 120775 to every pregnant patient, unless~~
4 ~~a positive HIV test result is already documented in the patient's~~
5 ~~medical record or the patient has AIDS as diagnosed by a~~
6 ~~physician. The explanation of an HIV test shall include discussion~~
7 ~~of all of the following:~~

8 ~~(1) The purpose of the test.~~

9 ~~(2) The risks and benefits of the test.~~

10 ~~(3) The right to refuse the test.~~

11 ~~(d) If the pregnant woman does not refuse the testing, the~~
12 ~~provider shall arrange for HIV testing and shall have the woman~~
13 ~~sign a statement indicating that she was informed of the test and~~
14 ~~of her right to refuse the test.~~

15 ~~(e) The prenatal care provider primarily responsible for~~
16 ~~providing prenatal care to a pregnant patient shall document in the~~
17 ~~patient's medical record that HIV information and counseling has~~
18 ~~been offered. The prenatal care provider shall also document the~~
19 ~~explanation of the HIV antibody test in the patient's medical~~
20 ~~record.~~

21 ~~(f)~~

22 ~~(c) Nothing in this section shall be construed to require~~
23 ~~mandatory testing, the documentation or disclosure of whether the~~
24 ~~patient had an HIV test, or the result of an HIV test except to the~~
25 ~~patient. Any documentation or disclosure of HIV-related~~
26 ~~information shall be made in accordance with Chapter 7~~
27 ~~(commencing with Section 120975) of Part 4 of Division 105~~
28 ~~regarding confidentiality and informed consent.~~

29 ~~(d) Notwithstanding Section 120990 or any other provision of~~
30 ~~law, completion of a statement of acceptance of an HIV test~~
31 ~~pursuant to Section 125090 shall be sufficient documentation of a~~
32 ~~pregnant woman's consent for HIV testing, and no laboratory or~~
33 ~~health care provider shall require any additional written consent~~
34 ~~or written form as a condition for HIV testing from any woman who~~
35 ~~is reasonably believed to be pregnant, who is receiving prenatal~~
36 ~~care, or who is undergoing a panel of tests designated for prenatal~~
37 ~~patients.~~

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